

**REMARKS:**

The Office Action dated July 31, 2006, has been received and carefully reviewed. The preceding amendments and the following remarks form a full and complete response thereto. Claims 1, 10 and 11 have been amended. No new matter is added. Accordingly, claims 1-11 are pending in the application and submitted for reconsideration.

Claims 1-4 and 6-11 were rejected under 35 USC § 102(e) as being anticipated by U.S. published patent application No. 2003/0181823 to Gatto ("Gatto"). The Applicant respectfully traverses the rejection and submits that claims 1-4 and 6-11 recite subject matter not disclosed by Gatto.

The presently claimed invention is an optical biopsy instrument and method having a cannula that includes a lateral opening 28 in a side surface of the cannula. In contrast, Gatto is directed to a micro-endoscope that includes a guide cannula which seats and guides an endoscope 12, having a tube end 35 that is the distal end of the cannula, and is not a lateral opening in a side surface of the cannula. Thus, Gatto fails to disclose each and every element of claims 1-4 and 6-11. Accordingly, the Applicant requests that the rejection be withdrawn and that claims 1-4 and 6-11 be allowed.

Claim 5 was rejected under 35 USC § 103(a) as being unpatentable over Gatto in view of U.S. Publication No. 2004/0127767 to Fleener et al. ("Fleener"). Fleener was filed on December 30, 2002, which is after the filing date of the priority document for the present application, German patent application No. 10258483, which was filed on December 10, 2002. Attached hereto is a verified English translation of the German priority document pursuant to 37 C.F.R. § 1.55. The Applicant submits that the German

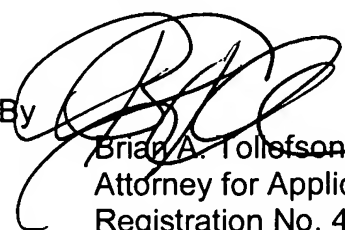
priority document supports claim 5 of the present application. Thus, Fleener is not prior art to the present application and the rejection is improper. Accordingly, the Applicant requests that the rejection be withdrawn and claim 5 be allowed.

In view of the foregoing, the Applicant submits that claims 1-11 are in condition for allowance and request that claims 1-11 be allowed and this application passed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, the Applicant's undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event that this paper is not timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees maybe charged to Counsel's Deposit Account No. 02-2135.

Respectfully submitted,

By 

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Attached      Verified English Translation